

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED
December 22, 2011

In the Matter of HEMMINGER, Minors.

No. 304151
Calhoun Circuit Court
Family Division
LC No. 2002-000643-NA

Before: CAVANAGH, P.J., and SAWYER and METER, JJ.

PER CURIAM.

Respondent appeals as of right the trial court's order terminating her parental rights to the three minor children under MCL 712A.19b(3)(c)(i) (conditions of the adjudication continue to exist), (c)(ii) (other conditions exist that cause the child to come within the court's jurisdiction), and (g) (failure to provide proper care or custody). We affirm.

To terminate parental rights, the trial court must find that at least one of the statutory grounds for termination set forth in MCL 712A.19b(3) has been met by clear and convincing evidence. MCL 712A.19b(5); *In re Sours*, 459 Mich 624, 632; 593 NW2d 520 (1999). The court must also find that termination is in the best interests of the child. MCL 712A.19b(5). We review for clear error a trial court's factual findings, its determination that a statutory ground for termination of parental rights has been proved by clear and convincing evidence, and its best interests determination. MCR 3.977(K); *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000).

In this case, respondent's parental rights were terminated under MCL 712A.19b(3)(c)(i), (c)(ii), and (g), which provide:

(c) The parent was a respondent in a proceeding brought under this chapter, 182 or more days have elapsed since the issuance of an initial dispositional order, and the court, by clear and convincing evidence, finds either of the following:

(i) The conditions that led to the adjudication continue to exist and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age.

(ii) Other conditions exist that cause the child to come within the court's jurisdiction, the parent has received recommendations to rectify those conditions,

the conditions have not been rectified by the parent after the parent has received notice and a hearing and has been given a reasonable opportunity to rectify the conditions, and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age.

* * *

(g) The parent, without regard to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child's age.

In regard to MCL 712A.19b(3)(c)(i), the conditions that led to the trial court taking jurisdiction over the older two children were that: respondent's parental rights to another child were terminated in 2002; the second of the three children in this case tested positive for cocaine and THC at the time of his birth in 2008; in 2009, respondent became homeless and left the children in the care of her mother, who tested positive for illegal drugs; and, later in 2009, complications with her pregnancy impeded respondent from complying with the service plan that had been put in place and from adequately caring for the children, particularly by finding alternate, suitable housing. The principal condition that led to the court taking jurisdiction over respondent's youngest child was her use of illegal drugs. At the time of his birth in February 2010, the youngest child's meconium tested positive for cocaine and marijuana. At a hearing on March 25, 2010, respondent entered a no contest plea, denying that she knowingly used cocaine before the birth and admitting that she last used cocaine in August 2009 and took "two puffs from a marijuana joint two weeks ago prior to the birth."

The trial court did not clearly err by finding that the ground for termination set forth in MCL 712A.19b(3)(c)(i) was met by clear and convincing evidence. In regard to housing, respondent moved multiple times throughout the proceedings. Previously, respondent had been homeless and had lived in her own apartment in Battle Creek. However, she was evicted from the apartment in July 2010, for failure to pay the rent. Thereafter, she moved to Detroit. She would not give DHS any information about where she was residing. Respondent moved back to Battle Creek in November 2010. Respondent rented rooms from relatives and friends, and also lived in a shelter, between November 2010, and February or March 2011. At the April 27, 2011, termination hearing, respondent testified that she had just moved into an apartment with her boyfriend. Given the overall instability in her living situation, the court did not clearly err by finding that the housing condition that led to the adjudication continued to exist and there was no reasonable likelihood that it would be rectified within a reasonable time considering the children's ages.

In regard to respondent's use of illegal drugs, she was required under the service plan to attend individual and group counseling for substance abuse and participate in drug screens. Respondent attended substance abuse counseling from March to June 2010. But, by May 28, 2010, she had missed three out of ten individual sessions and one out of ten group sessions. Respondent's attendance further declined in June 2010, and she thereafter stopped attending the substance abuse counseling. Respondent again sporadically attended counseling sessions in November and December 2010. She was "unsuccessfully discharged" from her program because

she had missed a high number of sessions, but she was given a second chance to participate in it in January or February 2011. Her attendance in February 2011 was very inconsistent, although it was more consistent in March 2011.

Over the course of the proceedings, respondent missed 46 drug screens and tested positive for illegal drugs at least nine times. At the time of the termination hearing, she had last tested positive for cocaine on January 7, 2011. She had last tested positive for marijuana on March 11, 2011, and March 31, 2011, the month before the termination hearing. Respondent testified that she had not used cocaine and that she last smoked marijuana in February 2011. The trial court did not find respondent's testimony in regard to her substance abuse to be credible. We find no clear error in the trial court's credibility determination, given the court's unique opportunity to observe the witnesses. See *In re BZ*, 264 Mich App 286, 296-297; 690 NW2d 505 (2004). Additionally, we note that respondent failed to accept responsibility for the positive screens. The trial court did not clearly err by finding that the substance abuse condition that led to the adjudication continued to exist and there was no reasonable likelihood that it would be rectified within a reasonable time considering the children's ages.

Additionally, the trial court did not clearly err by finding that the ground for termination set forth in MCL 712A.19b(3)(c)(ii) was met by clear and convincing evidence. The trial court held that respondent failed to substantially comply with the court-ordered service plan—a condition that would have caused the children to come within the court's jurisdiction under MCL 712A.2(b)—despite being given a reasonable opportunity for compliance. In addition to failing to comply with the housing and substance abuse components of the plan, respondent also failed to substantially comply with the parenting and employment or income components of the plan.

Respondent was required to attend supervised parenting sessions with her children, meet with a parenting aide, and attend parenting classes. Respondent met with a parenting aide two to three times per month between June 18, 2010, and February 4, 2011. Over the course of the proceedings, respondent attended all of the scheduled parenting sessions, with the possible exception of one. Her parenting sessions were suspended, however, on March 4, 2011, due to her lack of compliance with other services. Some of respondent's parenting sessions went well and others did not. There was concern that respondent did not discipline appropriately and left the youngest child in his stroller for extended periods of time during the sessions. There was testimony that respondent was not benefitting from the services due to her attitude. When service providers made recommendations about her parenting, she frequently became frustrated and argumentative. She frequently refused to implement their recommendations, stating that she did not need the assistance. The aide stopped working with respondent in February 2011, after respondent became angry and verbally abusive to her in front of the children. Respondent attended parenting classes in May and possibly June of 2010, but she did not attend any classes while she lived in Detroit. Respondent was again referred to parenting classes in February 2011, but she missed her classes on March 2, 2011, and March 23, 2011.

Throughout the proceedings, respondent also had no verified employment. She testified that during the time she lived in Detroit, she was working part-time for an elderly woman. But, she never presented DHS or the court with any proof of employment. After she moved back to Battle Creek, respondent purportedly worked odd jobs. But, again, those jobs were never verified. At a November 1, 2010, hearing, respondent testified that she had applied for Social

Security Disability earlier that year, but her application was denied. She planned to apply for cash assistance through Work First. She submitted paperwork to Work First in December 2010. But, when she subsequently failed to submit the weekly paperwork required, she became ineligible to receive cash assistance for at least three months. Also, in December 2010, respondent began meeting with an outreach counselor who offered to help respondent reapply for Social Security Disability, but respondent did not accept the offer. At the time of the termination hearing, respondent was still unemployed, with the possible exception of some odd jobs. She hoped to find a job through the Women's Co-Op and had not yet reapplied for cash assistance. She was receiving \$250 a month from her stepfather and had reapplied for Social Security Disability, but she did not know whether the application would be granted.

While respondent made at least some effort to comply with the service plan by attending parenting sessions, meeting with the parenting aid, and applying for financial assistance, the service providers testified and the record reflects that respondent failed to show substantial benefits from the services provided and generally lacked follow through. In light of these facts, the trial court did not clearly err in finding that MCL 712A.19b(3)(c)(ii) was met by clear and convincing evidence.

Finally, the trial court did not clearly err by finding that the ground for termination set forth in MCL 712A.19b(3)(g) was met by clear and convincing evidence. "[A] parent's failure to comply with the parent-agency agreement is evidence of a parent's failure to provide proper care and custody for the child." *In re JK*, 468 Mich 202, 214; 661 NW2d 216 (2003). Respondent did not consistently participate in or benefit from the services provided over the course of the proceedings. In addition, the facts that at the time of the termination hearing, respondent had not consistently lived in suitable housing, had no employment or stable income, had tested positive for cocaine as recently as January 2011 and for marijuana as recently as March 2011, and still made excuses for her lack of compliance with the service plan and for her children being in foster care, demonstrated that respondent was not in a position to provide proper care or custody for the children and there was no reasonable expectation that she would be able to within a reasonable time considering the children's ages.

Respondent argues that DHS's decision to discontinue her Medicaid after her children were removed precluded her from obtaining her bipolar medication from approximately June 2010 to December 2010. Respondent claims that had she been able to take her medication throughout the proceedings, she would have been able to comply with the service plan in a timely fashion, benefit from the services, and reunify with her children. But, respondent failed to take advantage of the programs, other than Medicaid, through which she could have obtained her medication. Respondent was aware she could obtain her medication for a co-pay of \$10 per week, but she could not afford the co-pay. Additionally, a foster care worker advised respondent on several occasions that she could obtain her medication, free of charge, through Calhoun County Health Plan. The parenting aide gave her an application and offered to go with her to the county office. Respondent finally obtained her medication through the county plan in December 2010. Even if respondent had been taking her medication consistently during the proceedings, however, the record does not support that she would have substantially complied with the service plan and benefited from the services. At the time of the termination hearing, respondent had purportedly been on her medication for more than three months and still demonstrated no improvement in the area of parenting, had no employment or steady income, had missed

parenting classes, counseling sessions, and drug screens, and had recently tested positive for illegal drugs. We are not persuaded by respondent's argument regarding her lack of bipolar medication.

The trial court did not clearly err by finding clear and convincing evidence to terminate respondent's parental rights under MCL 712A.19b(3)(c)(i), (c)(ii), and (g).¹ The court also did not clearly err by concluding that termination was in the children's best interests. In determining a child's best interests, a trial court may consider a variety of factors including the parent's history, inappropriate parenting techniques and the visitation history, the strength of the bond between the parent and child, the parent's compliance with treatment plans, the child's well-being while in care, the possibility of adoption, the child's need for permanence, and the length of time the child may be required to wait for the parent to rectify the conditions, which includes consideration of the child's age and particular needs. See *In re Jones*, 286 Mich App 126, 131; 777 NW2d 728 (2009); *In re BZ*, 264 Mich App at 296-297; *In re McIntyre*, 192 Mich App 47, 52-53; 480 NW2d 293 (1991).

There was evidence of a bond between respondent and the children, at least to the extent that they engaged with her and sat in her lap during some of the sessions, but they did not ask to visit respondent and their behavior improved after the parenting sessions were suspended. Furthermore, respondent had not substantially complied with or benefited from the court-ordered service plan and there was no indication that she would do so within a reasonable period of time considering the children's ages. The children were very young and, at the time of the termination hearing, had already lived in foster care for over a year. Given their young ages, their need for permanence, and the lengthy period of time they might be required to wait for respondent to rectify the conditions that brought them under the court's jurisdiction, termination of respondent's parental rights was in their best interests.

Affirmed.

/s/ Mark J. Cavanagh
/s/ David H. Sawyer
/s/ Patrick M. Meter

¹ Respondent asserts that the trial court terminated her parental rights under MCL 712A.19b(3)(c)(i), (g), and (h). But the trial court did not state at the termination hearing or in its termination order that MCL 712A.19b(3)(h) was a ground for termination. Moreover, MCL 712A.19b(3)(h) pertains to the parent being imprisoned, and there is nothing in the record indicating that respondent was ever imprisoned. Accordingly, we decline to address that subsection.